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Decision

Matter of: McCann-Erickson USA, Inc.

File: B-414787.2

Date: November 14, 2018

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DIGEST

Protest challenging agency's rejection of proposal for failing to include all cost/price materials with the firm's final proposal revision is denied where record shows protester failed to include vital information with its proposal that would have enabled the agency to perform a meaningful evaluation.

DECISION

McCann-Erickson USA, Inc. (ME), of New York, New York, protests the elimination of its proposal from consideration under request for proposals (RFP) No. W9124D-16-R-0046, issued by the Department of the Army for advertising services. ME argues that the agency unreasonably eliminated its proposal without a meaningful evaluation.

We deny the protest.

BACKGROUND

This is ME's second protest filed in connection with the agency's actions surrounding this acquisition. As we discussed in our first decision, the RFP contemplates the award of a hybrid¹ indefinite-delivery, indefinite-quantity contract to provide the Army with a full

¹ The solicitation includes fixed-price contract line items, as well as a variety of cost reimbursement type contract line items.

array of advertising and marketing services for a 5-year base period and two successive option periods of, respectively, 3 years and 2 years, for a total possible period of performance of 10 years. The ceiling value of the acquisition is \$4 billion. Firms were advised that the agency would make award on a best-value tradeoff basis, considering cost/price, along with several non-cost/price evaluation criteria. The evaluation criteria were listed in descending order of importance as follows: technical, cost/price, and small business participation, with technical deemed significantly more important than cost/price and more important than small business participation. RFP at 159-160.² In addition, the RFP stated that the non-cost/price factors, in combination, were deemed significantly more important than cost/price, but that the importance of cost/price could increase to the extent that proposals were found to be relatively equal in technical merit. Id. The RFP also provided for the evaluation of past performance on a pass/fail or acceptable/unacceptable basis. RFP at 159.

For cost/price purposes, the RFP provided that the agency would evaluate proposals to ensure that the offerors' proposed cost/price was fair and reasonable, realistic (based upon performance of a cost realism evaluation), and balanced. RFP at 164-165.

In addition to these considerations, the RFP stated that the agency would perform a two-phase evaluation of proposals. During phase one, written proposals would be evaluated, and during phase two, any firm whose proposal was evaluated as at least acceptable would be invited to make an oral presentation. RFP at 160.

In response to the solicitation, the agency received a number of proposals, including the one submitted by ME. The agency performed what it termed a "compliance review" of the initial proposals and eliminated ME's proposal from further consideration based on this compliance review. The agency found, for example, that ME's proposal was ambiguous as to the identity of the offeror; failed to include a pre-award survey of ME's accounting system checklist; and submitted its cost/price proposal in a format (portable document file format rather than Microsoft Excel format) that was different than the format called for under the solicitation's proposal preparation instructions.

In response to the agency's original elimination of its proposal, ME filed a protest in our Office, maintaining that the RFP's evaluation scheme did not contemplate eliminating proposals based on a compliance review. We agreed with ME and sustained its protest, recommending that the agency reevaluate ME's proposals in light of the RFP's evaluation scheme. McCann-Erickson USA, Inc., B-414787, Sept. 17, 2017, 2017 CPD ¶ 300.

In response to our earlier decision, the agency reevaluated ME's initial proposal and concluded that it was eligible for continued participation in the acquisition. The agency then engaged in extensive discussions with ME and the other offerors included in the

² All references to the RFP are to the conformed RFP provided by the agency at exhibit 13 to the agency report (AR).

competitive range and solicited final proposal revisions (FPRs). In submitting its FPR, ME neglected to include all of the information required in the proposal instructions (section L) of the RFP. Specifically, the ME cost proposal did not include a cost/price workbook required by the solicitation, and also did not include any of the required back-up cost/price data that would have been necessary for the agency to evaluate its proposed cost/price. After the agency received the ME proposal, it reviewed the contents for completeness. Finding these materials lacking, the agency concluded that the ME proposal could not be evaluated. The agency therefore rejected the ME proposal and advised the firm of its action. After being advised of the agency's action, ME filed the instant protest.

PROTEST

ME argues that the agency unreasonably rejected its proposal without meaningfully evaluating it, although ME concedes that it failed to include the missing information with its proposal. According to the protester, the agency nonetheless had all of the information it needed to perform an evaluation based on materials submitted by ME during discussions.

We find no merit to ME's protest. We note at the outset that, in reviewing protests challenging an agency's evaluation of proposals, our Office does not reevaluate proposals or substitute our judgment for that of the agency; rather, we review the record to determine whether the agency's evaluation was reasonable and consistent with the solicitation's evaluation criteria, and applicable statutes and regulations. ManTech Advanced Sys., Int'l, Inc., B-413717, Dec. 16, 2016, 2016 CPD ¶ 370 at 3. On this record, we have no basis to object to the agency's actions.

As noted above, we sustained ME's last protest because the RFP, as written at the time of initial proposals, did not contemplate the elimination of proposals based on what the agency termed a compliance review. Subsequent to our last decision, however, the agency amended the solicitation's basis for award, which now provides, in pertinent part, as follows:

The Government will perform an initial assessment of the Offerors' proposals against the submittal requirements of Section L [instructions to offerors]. Failure to submit the required documentation in the format specified in Section L of this solicitation may render the Offeror's proposal unevaluable and the proposal will be eliminated from the competition without further consideration.

RFP at 158. The record shows that the agency's elimination of the ME proposal was based on this provision, along with what amounted to an admission on the part of ME that it failed to include a disc containing the missing information with its proposal. In this connection, the contracting officer states that, after the deadline for submission of proposals, she received a telephone call from one of the principal representatives of ME, and that individual stated that she wanted to submit a disc that had been found in a ME employee's computer. Contracting Officer's Statement of Facts at 5. The

contracting officer further states that the day after FPRs were due, she received a package from ME, but did not open it. Id. She then sent an e-mail to this same individual asking about the contents of the package. The individual confirmed that the package contained the cost/price workbook and supporting cost/price data. AR, exh. 90, Confirming E-Mail from ME's Representative to the Contracting Officer.

The record shows that, after this exchange, the contracting officer provided the cost/price proposal evaluation team with the cost/price proposal materials that had been submitted by ME, specifically, the cost/price narrative portion of the firm's proposal. The cost/price team reviewed these materials and concluded that they were inadequate for evaluation purposes. For example, one of the agency's cost/price evaluators noted that, among other things, the ME FPR included only summary costs/prices for sample tasks 1 and 3, and that the evaluators would be unable to evaluate these sample tasks for cost realism because they did not have data segregating the summary costs/prices by cost element. AR, exh. 89, Cost/Price Memorandum No. 3 for the Record.

A second cost/price evaluator also noted that, for these same sample tasks, there was no information in the ME FPR detailing the level of effort for performing the sample tasks, information that also would be necessary to determine the realism of the firm's proposed costs/prices. AR, exh. 88, Cost/Price Memorandum No. 2 for the Record.

A third cost/price evaluator noted that there were changes in ME's proposed costs/prices between the materials submitted by ME during discussions and the costs/prices proposed in ME's FPR, as well as contradictions within the cost/price submission included with ME's FPR. He states, for example, as follows:

The proposal changed from \$[deleted] in EN [evaluation notice] 4 to \$[deleted] in the FPR. Some of the difference could be explained by the [deleted], but the remaining difference could not be explained by what was in the FPR submittal. In addition the contractor provided contradictory numbers for Sample Task 1. Within the narrative of the proposal the contractor states the total Sample Task 1 is \$[deleted], however they provide a table later in the narrative identifying the Sample Task 1 [deleted] totaling \$[deleted]. This difference is not clearly explained, and the government is not sure whether the [\$\$\$][deleted] is an alternative to the [\$\$\$][deleted] proposed or whether it is cost in addition to the amount proposed. Without the supporting documentation or further discussion we cannot determine the accuracy in either number or which methodology to use. Accordingly, even a price analysis would carry significant risk not knowing which amount is the most probable cost (MPC).

AR, exh. 87, Cost/Price Memorandum No. 1 for the Record, at 1. In short, the record shows that the agency reviewed the materials included with ME's FPR and concluded that there was inadequate information for purposes of performing a meaningful cost/price evaluation of the proposal. On this record we have no basis to object to the agency's rejection of the ME proposal for failing to include all of the required cost/price materials.

As noted, ME also argues that the agency simply could have used the materials the firm submitted during discussions to evaluate its cost/price proposal. We find no basis to object to the agency's decision not to rely on materials submitted by ME during discussions. First, as noted above, there was a discrepancy in the amount of ME's total evaluated cost/price between the materials submitted during discussions and ME's FPR; during discussions, ME's total evaluated cost/price was \$[deleted], while its FPR was in the amount of \$[deleted]. ME argues that this difference is attributable to the elimination of a cost element previously included in its materials during discussions, but there is no contemporaneous evidence to support the firm's claim. In addition, as discussed, there were other cost/price discrepancies noted in the cost evaluators' memoranda that also are not explained in the contemporaneous record.

Second, as the agency also points out, there were changes to ME's technical proposal submitted with its FPR, and there is no way for the agency to evaluate these changes--and the potential cost/price impact of the changes--without a complete cost/price proposal from ME.

Finally, the record shows that the agency specifically cautioned ME twice about relying on material presented to the agency during discussions as a substitute for submitting a complete FPR. First, the record includes questions submitted by ME to the agency during the initial round of discussions, along with answers to those questions. Among the questions is the following exchange:

Q. Will the content of EN [evaluation notice] responses be considered in the final evaluation and source selection if that content is not also included in the Final Proposal Revision due to page limitations?

A. No, EN [evaluation notice] response content that is not included in the Final Proposal Revision (FPR) will not be considered in the final evaluation.

AR, exh. 14, Consolidated Questions and Responses, General Question No. 2. In addition to this caution, the contracting officer provided the following warning to ME in the letter she sent to the firm requesting its FPR:

Through Discussions, cost/price data was provided to the Government for consideration and evaluation of your initial proposal. Please ensure that data is updated and submitted with FPR. Do not assume that the Government will attempt to trace back through the data that was received as a result of Discussions in an attempt to evaluate the revised Cost/Price Volume. If as a result of Discussions, the cost/price data is updated, please ensure that those cells/formulas/look-up tables, etc. that have been updated are highlighted in yellow. Cost/Price data is not considered a part of the narrative page count.

AR, exh. 79, Letter To ME Requesting its FPR, at 2 (emphasis supplied).

In the final analysis, the record in this acquisition shows that ME not once--but twice--submitted an inadequately prepared proposal, first during the submission of initial proposals, and yet again during submission of FPRs. And, while the RFP as originally issued did not contemplate the agency's performance of what it termed a compliance review of proposals, the agency expressly revised the RFP to permit such a review of FPRs.

Here, the protester concedes that it failed to submit what could only be described as information vital to a meaningful review of its proposal--the details and supporting documentation underlying its proposed cost/price. Without this information, there was no way for the agency to perform a substantive review of ME's proposal. Offerors are responsible for submitting an adequately written proposal and bear the risk that the agency will find its proposal unacceptable where the offeror fails to demonstrate compliance with all of a solicitation's requirements. ManTech Advanced Sys., Int'l., Inc., supra. at 5, 7.

Moreover, as discussed, the record shows that there were differences and discrepancies between the materials submitted by ME during discussions and its proposed cost/price submitted with its FPR, and the agency repeatedly cautioned ME that proposal changes that were the byproduct of discussions had to be included in the firm's FPR in order to be considered. Accordingly, there is no basis for our Office to object to the agency's decision not to utilize materials submitted during discussions to evaluate ME's FPR. We therefore have no basis to object to the agency's actions for the reasons advanced by the protester.³

The protest is denied.

Thomas H. Armstrong
General Counsel

³ As a final matter, ME argues that the agency abused its discretion in failing to clarify with the firm that the cost/price workbook and supporting materials submitted during discussions could be used as a substitute for those same materials that were not included in its FPR. However, since we conclude above that the agency was not required to use the materials submitted by ME during discussions, it follows that the agency's failure to seek clarification of the issue also would not provide a basis for us to sustain ME's protest.